IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.870 of 2001

A.Thangaraj ... Appellant

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management of Srichakra Tyres Ltd.,
10, Jawahar Road,
Madurai-625002. ... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent as against the order of the learned single Judge dated 15.11.2000 made in W.P.No.22470 of 1993 praying for issuance of writ of certiorari to call for the records in connection with the award in I.D.No.235/90 dated 23.04.1993 passed by the 1st respondent and quash the same and direct the 2nd respondent to reinstate the petitioner with backwages and all other consequent benefits with costs payable by the 2nd respondent.

For appellant : Mr.V.Prakash, Senior Counsel
for M/s.G.Ramapriya

For R.2 : Mr.A.L.Somayaji,
Senior Counsel,
for Mr.S.Raghavan

JUDGMENT

WEB COPY

S. PALANIVELU, J.

Writ petitioner has filed this Appeal, against the order of a learned single Judge of this Court, made in W.P.No.22470 of 1993.

2. The appellant/workman has filed W.P.No.22470 of 1993 for issuance of a Writ of Certiorari, to call for the records relating to the award in I.D.No.235 of 1990, dated 23.04.1993, passed by first respondent, quash

https://hcservices.ecourts.gov.in/hcservices/

the same and consequently to direct the second respondent/Management to reinstate the petitioner with back wages and all other consequent benefits.

3. The case of the appellant was that he was appointed as a Trainee with the second respondent management on 22.12.1983; he was a probationer from 1.1.1985; his services were confirmed from 1.1.1986 in the post of Boiler Operator; his last drawn wages were Rs.1,027/- per month; he was a key trade union activist, who organised the Sri Chakra Tyres Division of the Sundaram Industries Employees Union, and that the TVS corporate group has been attempting to deter genuine trade unionisation of its workmen by abusive exercise of transfer and disciplinary powers and by practising gross discrimination against the members of the genuine trade union.

4. The further case of the appellant was that on 30.07.1989, when he was working in third shift, he was intimidated by a Foreman, by name Dwarakanath, ostensibly at the instigation and instructions of the management, which was complained to the Deputy Personnel Manager of the management on 31.07.1989; a preliminary investigation was made thereon and the matter was closed as false, but, a charge memo was slapped on him as if he had given a false complaint against the Foreman; he submitted an explanation on 13.8.1989; however, not content with the said explanation, the management ordered a domestic inquiry, in which one S.Thiyagarajan, Deputy Personnel Manager of TVS and Sons Limited, was appointed as the Enquiry Officer; after the inquiry, the said officer gave a finding to the management, opining that charges were proved; on receipt of inquiry report, he was dismissed from service on 14.11.1989; then, he preferred a conciliation petition before the Deputy Commissioner of Labour, which ended in vain; hence, he sent a representation to the Government and thereafter the dispute was referred to the Labour Court/first respondent, for adjudication.

5. The Labour Court passed an award on 23.4.1993, holding that dismissal of the appellant was justified and that he was not entitled for any relief. Hence, he preferred the Writ Petition, wherein the order of dismissal was set aside and he was directed to be appointed as a fresh candidate, but without back wages, continuity of service, attendant benefits or any monetary benefits. Not satisfied with the said order of the learned single Judge, he filed this appeal before this Court.

6. We have heard Mr.V.Prakash, learned senior counsel for the appellant and Mr.A.L.Somayaji, learned senior counsel for the second respondent/Management.

7. The learned senior counsel for the appellant would submit that the entire enquiry proceedings are vitiated by bias and the Labour Court has failed to exercise its power under Section 11-A of the Industrial Disputes Act and has landed in an erroneous conclusion to hold the charges levelled against the appellant/workman proved and the learned single Judge has also not considered the matter in its proper perspective, thus compelling the appellant to file this appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. On the other hand, the learned senior counsel for the second respondent/Management would submit that both the Labour Court and the learned single Judge have appreciated the facts and circumstances of the case in their proper perspective, holding that there is no illegality in the whole of the enquiry proceedings and the punishment of dismissal from service inflicted on the workman does not call for any interference, but, however, the learned single Judge, taking a lenient view, has ordered fresh appointment of the appellant/workman, which itself is a big relief for the appellant/workman, but not satisfied even with such a lenient order of the learned single Judge, the appellant has again filed this writ appeal, which deserves only dismissal.

9. The charge against the appellant/workman is that he gave a false complaint against his superior officer that he threatened the appellant to remove from his job. The strong case of the appellant/workman is that he is a key activist in organising the Sri Chakra Tyres Division of the Sundaram Industries Employees Union and therefore, the Management, which is running a puppet Employees Union to impose unilateral conditions of service, has targetted him and abusing the disciplinary powers, has ultimately dismissed him from service. This strong plea taken on the part of the appellant has not at all been considered by the Labour Court, which is expected of to exercise its powers under Section 11-A of the Industrial Disputes Act.

10. Admittedly, a preliminary enquiry was initiated by the Management on the complaint lodged by the appellant against his superior that he threatened and in the said preliminary enquiry conducted by the Deputy Personnel Officer of the Management, the complaint of the appellant/workman was held to be false. Having regard to the entire case on hand, we are unable to believe the said conclusion arrived at by the said Deputy Personnel Officer, since the very case of the appellant/workman is that his superior officer viz. Mr.Dwarakanath, made such a threat at him only at the instigation of the Management, since being not satisfied with his active role in launching Employees Union. By initiating preliminary enquiry and nullifying the complaint lodged by the appellant/workman as false, the Management has proceeded against the appellant/workman for lodging 'false complaint' and ultimately dismissed him from service. Thus, the threat posed by Mr.Dwarakanath to the appellant/workman has become true and the Management was successful in serving walking papers on the appellant/workman, thus fulfulling their ambition of dismissing the appellant/workman. From this conduct, we are able to find that there is force in the case put up on the part of the appellant/workman that Mr.Dwarakanath threatened him only with the active support of the Management, lest, for such a charge, which appears to be flimsy, a major punishment of dismissal would not have been inflicted upon the appellant/workman.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. At this juncture, it is to be mentioned that in MATHURA PRASAD vs. UNION OF INDIA [(2007) 1 SCC 437, considering the entire case law on the subject of judicial review, the Apex Court has categorically and in no uncertain terms has ruled:

> "When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

12. The Labour Court is bound to exercise its jurisdiction as required under Section 11-A of the Industrial Disputes Act. Non-exercise or improper exercise of the jurisdiction conferred on the Labour Court, by virtue of Section 11-A of the Industrial Disputes Act is held to be illegal in a series of judgments by the Apex Court since the power of the Labour Court under Section 11-A is analogous to an appellate Court. At this juncture, it is to be noted that the Labour Court has not only the power and jurisdiction to reappreciate the evidence, but has also a duty under Section 11-A of the Industrial Disputes Act to consider as to whether or not the impugned punishment was just and proper in the facts and circumstances of the case and whether or not for the ends of justice it is desirable to inflict a lesser punishment on the concerned employee and to grant relief under Section 11-A there must be a finding that the discharge or dismissal is not justified.

13. In the case on hand, the Labour Court, without understanding the undercurrent of the matter, which led and paved the way for the dispute resulting in the dismissal of the appellant and without considering the question as to whether for the alleged charge of false complaint, such a severe punishment of dismissal from service is proportionate, has casually dealt with the matter and dismissed the industrial dispute raised by the appellant/workman. If the Labour Court has properly understood the background of the case, in the considered opinion of this Court, it would not have landed in such a finding, depriving the livelihood of an employee. The Labour Court and the learned single Judge have failed to find that the entire enquiry proceedings are biased and the appellant/workman was victimised for his active role in forming an Employees Union.

14. In this connection, learned counsel for the appellant draws attention of this Court to a decision of the Hon'ble Supreme Court in Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and Anr., 2007 (4) Supreme Court Cases 669, wherein it has been held:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. Even prior to CCSU case, 1985 AC 374: (1984) 3 WLR 1174 (HL), the Supreme Court of India had held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a court to interfere with such penalty in appropriate cases. However, in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the ID Act, 1947 was enacted."

15. It is well settled that the doctrine of proportionality has its genesis in the field of administrative law. The management, while administering its affairs, is expected to follow the settled legal principles and treat the employees with full personal consideration without abuse of discretion.

16. While discussing the principle of law relating to "proportionality", the Hon'ble Supreme Court, in Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees' Association and another, 2007 (3) L.L.N.128, has formulated certain dictums, which the Courts in the country are bound to follow. The gist of the principles contained in the decision of the Hon'ble Supreme Court is as follows :

"18. "Proportionality" is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise – the elaboration of a rule of permissible priorities.

19. De Smith states that "proportionality" involves "balancing test" and "necessity test"." Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative...."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

17. In the light of the above discussion and following the above judgments of the Apex Court, we are of the considered opinion that neither the Labour Court nor the single Judge have appreciated the facts and circumstances of the case in their proper perspective, leading to miscarriage of justice, thus compelling us to cause our interference to set right the illegality committed. Accordingly, this appeal is allowed and the appellant/workman is directed to be reinstated into service with continuity of service. However, taking into consideration the long period of severance of employee-employer relationship between the appellant and the second respondent, we direct the respondent Management to reinstate the appellant/workman with 50% backwages. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit/Rao

To

The Presiding Officer,
Labour Court, Madurai.
(with records)

copy to

The Record Keeper,
VR Section, High Court,
Madras.

1 CC To Mr.V.Prakash, Advocate, SR NO.54173.
1 CC To Mr.S.Raghavan, Advocate, SR NO.54285.

W.A.No.870 OF 2001

DM(CO)
RVL 07.09.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/